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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/469,206 | 12/21/1999 | JOHN T. PUGACZEWSKI | 1626(USW0529 | 4702 |

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EXAMINER

POLLACK, MELVIN H

ART UNIT

PAPER NUMBER

2142

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9

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------------|--------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/469,206 | PUGACZEWSKI ET AL. |
| | Examiner Melvin H Pollack | Art Unit 2142 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 15 November 2002 .

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 21 December 1999 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____ .

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input checked="" type="checkbox"/> Other: <i>see attached office action</i> . |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.
2. Examiner notes that applicant has amended the independent claims, and has thus changed the scope of the invention.
3. Applicant added a new limitation that a user uses an interface to select a bandwidth that is, in turn, provisioned as the connection bandwidth between the switch and the user point. Examiner agrees that the applicant has successfully amended around the original rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1, 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Jones et al. (6,307,836).

6. For claim 1, Jones teaches (see abstract) a computer readable storage medium having instructions stored thereon (col. 8, lines 60-67), the instructions being executable by a computer (col. 8, lines 50-60) to provide, to a user (Fig. 1, #104), a user interface (Fig. 1, #118) to a network management system (Fig. 1) for configuring a network connection (col. 1, lines 5-12) between a provider access point (Fig. 1, #110) and a user access point (Fig. 1, #106) over a network (Fig. 1, #128, 130) including a permanent virtual circuit (Fig. 1, #130 and col. 10, lines 33-46) between a switch (Fig. 1, #108) and the user access point, the medium further comprising:

- a. Instructions for providing a user interface to the user at the user access point that interfaces the user with the network management system (col. 4, lines 45-50) and that directs the user to select a connection bandwidth for the permanent virtual circuit between the switch and the user access point (col. 4, lines 50-63);
- b. Instructions for receiving at the network management system, through the user interface, a message indicative of a selected bandwidth from the user (Fig. 1, #122); and
- c. Instructions for remotely provisioning the switch with the network management system in response to receiving the message to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the user selected bandwidth thereby allowing the user, from the user access point, to interface with the network management system and select a bandwidth that is, in turn, provisioned as the connection bandwidth between the switch and the user access point (col. 4, lines 53-63 and col. 5, lines 5-10).

7. As for claim 4, Jones also teaches instructions for authenticating the user prior to remotely provisioning the switch (Fig. 4, #406).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 2, 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones as applied to claims 1, 4 above, and further in view of Farnsworth et al. (6,377,554).

10. For claims 1, 4, that which is anticipated is obvious.

11. As for claim 2, Jones does not expressly disclose the time limits, but does teach that the connection bandwidth is limited by a previous bandwidth (col. 6, lines 7-11). Farnsworth teaches that there are:

- a. Instructions for directing the user to select a time duration for the selected connection bandwidth (col. 2, lines 35-36);
- b. Instructions for receiving a message indicative of a selected duration (col. 2, lines 35-36, where it is obvious that a server can receive the information that it requests); and
- c. Instructions for, upon the expiration of the selected duration after remotely provisioning the switch to limit the connection bandwidth by the selected bandwidth, remotely provisioning the switch with the network management system to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the previous bandwidth (col. 2, lines 29-51).

12. Farnsworth also teaches many of the limitations in claim 1 (abstract; Fig. 2-6; col. 1, lines 5-15). At the time the invention was made, one of ordinary skill in the art would have placed

Farnsworth timers on the Jones system so as to limit thrashing and to provide a more cost-effective system (col. 1, lines 62-67).

13. Claims 1, 3, 4, 6, 7, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones as applied to claims 1, 4 above, and further in view of Ravi et al. (6,292,834).

14. For claims 1, 4, that which is anticipated is obvious.

15. As for claims 3 and 6, Jones teaches a user interface, as shown above, but does not necessarily disclose that the interface is graphical. Ravi discloses a GUI within a browser (Fig. 3, #240). Ravi also teaches many of the limitations drawn in claim 1 (abstract, Fig. 1-4, col. 3, lines 10-40). At the time the invention was made, one of ordinary skill in the art would have used a Ravi GUI as the Jones user interface in order to make the Jones system more user friendly.

16. Claim 7 is the underlying method for the system drawn in claims 1 and 3. The prior art teaches that a system implementation is functionally equivalent to the underlying method. Therefore, if claims 1 and 3 are rejected, then claim 7 is also rejected for the reasons above.

17. Claim 9 is the underlying method for the system drawn in claim 4. The prior art teaches that a system implementation is functionally equivalent to the underlying method. Therefore, if claim 4 is rejected, then claim 9 is also rejected for the reasons above.

18. Claims 1, 4, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones as applied to claims 1, 4 above, and further in view of Ma et al. (5,953,338).

19. For claims 1, 4, that which is anticipated is obvious.

20. As for claim 5, Ma also teaches that the network includes a plurality of subnets (col. 3, lines 16-17), each subnet having a corresponding element type (col. 3, lines 17-19) and including at least one programmable element of that type (col. 3, lines 9-15), each element type having a corresponding element manager (col. 3, lines 19-22), the medium further comprising:

- a. Instructions for determining a route made up of links over the network from the provider point to the user point, wherein a network-to-network link connects a pair of adjacent subnets having elements of different types and a network logical link provides a path across a subnet (col. 3, lines 23-30); and
- b. Instructions for establishing a connection across each subnet on the route by sending a request to the corresponding element manager to program the at least one subnet element in accordance with the network logical link across that subnet, and for establishing a network-to-network connection between adjacent subnets on the route in accordance with the network-to-network link between those adjacent subnets to provide the network connection between the provider point and the user point (col. 3, lines 31-41).

21. Ma also teaches many of the limitations in claim 1, as shown in the last office action and as acknowledged by the applicants in remarks, Pp 4-5. Jones teaches that there are multiple networks (col. 1, lines 19-35), but does not expressly disclose its usage within the system, although it would be obvious that users would be on one of several environments given the history and structure of today's Internet. At the time the invention was made, one of ordinary skill in the art would have used Ma's subnet structure to combine several nods of Jones in order to better help Jones manage its users (col. 4, lines 13-33).

22. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones and Ravi as applied to claim 7 above, and further in view of Farnsworth, as applied to claim 2 above.

23. Claim 8 is the underlying method for the system drawn in claim 2. The prior art teaches that a system implementation is functionally equivalent to the underlying method. Therefore, if claim 2 is rejected, then claim 8 is also rejected for the reasons above.

24. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones and Ravi as applied to claim 7 above, and further in view of Ma, as applied to claim 5 above.

25. Claim 10 is the underlying method for the system drawn in claim 5. The prior art teaches that a system implementation is functionally equivalent to the underlying method. Therefore, if claim 5 is rejected, then claim 10 is also rejected for the reasons above.

Conclusion

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

27. Other embodiments of a user selecting bandwidth through bandwidth on demand: Ozlaturk (6,075,792), Dunn et al. (6,118,780), Wang (6,385,169), Hanko et al. (6,438,141).

28. Background on ISDN networks and on bandwidth allocation: Ohanian et al. (6,122,287), Ben-Ami (6,301,267), Arrango (5,732,078) Reininger et al. (6,404,738), Kubler et al. (6,389,010).

29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin H Pollack whose telephone number is (703) 305-4641. The examiner can normally be reached on 8-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark R Powell can be reached on (703) 305 - 9703. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800.

MHP
January 22, 2003



ROBERT B. HARRELL
PRIMARY EXAMINER